

1      **5 PAGES**

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3      Bar No. 99829

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9      **UNITED STATES BANKRUPTCY COURT**

10     **EASTERN DISTRICT OF CALIFORNIA**

11     In the Matter of

12     Case No. 10-14695-B-7K

13     SILVER AIR CONDITIONING &  
14     HEATING, INC.,

15     DC-PK-3  
16     Chapter 7

17     Debtor.

18     MOTION FOR ORDER  
19     AUTHORIZING TRUSTEE TO  
20     SELL PERSONAL PROPERTY AT  
21     PUBLIC AUCTION

22     DATE:     June 3, 2010 (Pending order shortening time)

23     TIME:     10:00 A.M.

24     PLACE:    1300 – 18<sup>th</sup> Street, Dept. B  
25               Bakersfield, CA 93301

26     JUDGE:    W. RICHARD LEE

27     COMES NOW JEFFREY VETTER, Chapter 7 Trustee, through his attorney of  
28     record, PATRICK KAVANAGH, and moves this Court for an order authorizing trustee  
to sell personal property at public auction sale and respectfully represents as follows

29     1.     SILVER AIR CONDITIONING & HEATING, INC., ("debtor") filed a  
30     voluntary petition under Chapter 7 on April 30, 2010. Jeffrey Vetter is the duly  
31     appointed, qualified and acting trustee in this bankruptcy case.

32     2.     The assets to be sold are set forth in Exhibit "A" filed concurrently  
33     herewith.

1           3. The trustee seeks authority to sell said assets at public auction on or  
2 about October 17, 2009, under 11 U.S.C. §363(b)(1). This Court has jurisdiction under  
3 28 U.S.C. §1334 and 11 U.S.C. §363. This is a core matter under 28 U.S.C.  
4 §157(b)(2)(A) and (N). The trustee believes that selling said assets at public auction  
5 will yield the best price obtainable for the assets under the circumstances of the  
6 Chapter 7 case filed by the debtor.

7           4. The assets are currently on the premises of the debtor. The trustee is  
8 informed and believes that the auction will be conducted at two locations in Bakersfield.

9           5. In order to expedite the sale of the assets, the trustee entered into an  
10 agreement with Jerry Gould of Gould Auction & Appraisal Company to advertise and  
11 manage the auction ("auctioneer").

12           6. According to the agreement between the trustee and the auctioneer, the  
13 fees for professional services rendered by Gould Auction & Appraisal Company are as  
14 follows:

15           a. Auctioneer is to receive a commission of 15% (fifteen percent)  
16 on the gross proceeds from the sale.

17           b. Buyer will be charged a \$50.00 fee for each vehicle to cover  
18 Department of Motor Vehicle transfer of title expense. The \$50.00  
19 DMV fee will be paid directly to the auctioneer.

20           c. Auctioneer's commission will be noticed in the Trustee's Notice  
21 of Hearing on Motion for Order Authorizing Trustee to Sell Personal  
22 Property at Public Auction Sale, and creditors will be given the  
23 opportunity to object to said commission. If no objections are  
24 presented at the hearing, the auctioneer will be paid by the trustee  
25 from the proceeds of the sale within ten days of receipt of funds from  
26 the auctioneer.

27           d. Auctioneer will be paid a maximum of \$2,000.00 for picking up  
28 the miscellaneous personal property; however, auctioneer will bear  
the cost of all other ordinary expenses including, but not limited to,

1 security, advertising and other costs of sale. Additionally,  
2 auctioneer will receive \$100.00 per vehicle for transporting  
the vehicles.

3 e. Auctioneer will be reimbursed for any extraordinary expenses  
4 such as repair work deemed by the trustee to be necessary or  
5 beneficial to the estate in an amount up to but not to exceed \$100.00  
per vehicle. Auctioneer will be reimbursed for any extraordinary  
expenses in excess of \$100.00 per vehicle only after court approval.

6 f. Auctioneer will be responsible for collecting and paying all  
7 sales tax in relation to this auction.

8 g. Trustee has reviewed the Auctioneer's \$100,000.00 bond.  
9

10 7. Trustee believes that the sale of the assets at a public auction sale is in  
11 the best interest of all parties concerned because (a) it allows the assets to be shown  
12 to a wide variety of potential buyers and (b) it allows the estate to find a buyer and  
13 complete the sale in a short period of time.  
14

15 8. The details of the compensation of the auctioneer will be subject to the  
16 terms and conditions set forth in the Application for Order Authorizing Employment of  
17 Auctioneer to Conduct Public Auction.  
18

19 9. The trustee has personally inspected the California vehicle titles (pink  
20 slips) and with one exception which will be discussed *infra*, the estate has clear title.  
21

22 10. There is one vehicle that is subject to a lien in favor of GMAC, a 2004  
23 GMC Sierra truck. The trustee is in the process of getting a pay-off demand. If the  
24 winning bid is sufficient to pay off the vehicle and the costs of sale, the trustee will sell  
25 the vehicle. The lien to GMAC and the costs of sale will constitute a reserve for this  
26 one vehicle. The other vehicles will be sold without reserve.  
27

28 11. Prior to filing this motion, the trustee conducted a Uniform Commercial  
Code (UCC) search. There was one UCC-1 that attached to the personal property

1 other than vehicles, there is a UCC lien in favor of the State of California, Employment  
2 Development Department. It is the trustee's understanding, information and belief that  
3 the approximate amount of the lien is \$2,846.20 as set forth in the bankruptcy petition.  
4 The trustee, based on his discussion with the auctioneer, is confident that he can sell  
5 the property for an amount in excess of the lien.

6  
7 12. There is a very short time period between the motion to approve the sale  
8 and the sale. The trustee wants to take advantage of an already scheduled sale. It is  
9 the opinion of the trustee and the auctioneer that a larger sale would produce a better  
10 result for this bankruptcy estate.

11  
12 13. Likewise, the trustee believes that a sale at this auction, rather than at a  
13 future sale, is in the best interest of the bankruptcy estate. A later sale will allow the  
14 vehicles to sit idle. This will increase the probability of dead batteries and similar  
15 problems with vehicles which will produce both lower sales prices and higher repair  
16 costs. Additionally, there is the potential for damage or theft to the assets.

17  
18 14. This sale differs from any other sale in that it is being conducted in two  
19 parts in two places. The main sale will occur at the auctioneer's premises in Shafter.  
20 The remaining sale will be conducted on the premises of the business. The remaining  
21 sale will consist largely of metal inventory, particularly sheet metal inventory. The  
22 sheet metal will be expensive and dangerous to move. The value of the sheet metal is  
23 low, particularly in relation to the cost of moving. Lastly, the market for sheet metal is  
24 fairly limited. Under the circumstances, it is reasonable to conduct the sale in two  
25 places.

26  
27 WHEREFORE, trustee prays that:

28 1. The Court grant this motion;

- 1           2. Trustee be authorized to sell the assets at public auction pursuant to the  
2 terms and conditions set forth in the Application for Order Authorizing Employment of  
3 Auctioneer to Conduct Public Auction;
- 4           3. Trustee be authorized to pay Gould Auction & Appraisal Company from  
5 the proceeds received from the auction sale; and
- 6           4. For such other and further relief as the Court deems just and proper.

7 DATED: *May 17, 2010*

8           9 LAW OFFICES OF PATRICK KAVANAGH

10          11 By 

12          13 PATRICK KAVANAGH  
14          15 Attorney for Trustee

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